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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 72-281

LAWRENCE CHRYSLER PLYMOUTH, INC.,
Petitioner,

vs.

CHRYSLER CORPORATION, CHRYSLER MOTORS CORPORATION, AND CHRYSLER REALTY CORPORATION,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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MAY IT PLEASE THE COURT:

I.

CERTIORARI SHOULD BE DENIED BECAUSE THE PETITION PRESENTS NO QUESTION WORTHY OF REVIEW BY THIS COURT.

The petition for certiorari raises no question worthy of review by this Court under the criteria laid down in Rule 19, and hence should be denied.

The ultimate question presented by the petition is whether, under the particular facts of record, the District Court erred in directing a verdict for the three Chrysler corporations as to Count I of plaintiff's complaint, which was based upon the Automobile Dealer's Franchise Act (15 U. S. C. §§ 1221-1225). A contention that the District

Court erred in directing a verdict upon a claim based upon a federal statute, under the particular facts before it, raises no question of national importance that merits review by this Court.

Moreover, not only are the actual facts unique and nonrecurring, but many of the "facts" stated in the petition are nonexistent.* We give some examples of petitioner's misstatements below.

The petition asserts that the financial status of the previous dealership was concealed from petitioner (p. 5) and that the jury could have concluded that Chrysler's only intention in entering into franchises with petitioner was to transfer the burden of a repressive lease and a losing proposition on some entity other than itself (Pn. 9).

This is a charge of fraud that petitioner did not even make in the District Court under its fraud count (Count II) or in the Court of Appeals, and apparently is being made here for the first time in an obvious attempt to prejudice respondents in the eyes of the Court. Whatever petitioner's motivation may be for making the claim, it is contrary of the testimony of petitioner's own president.

The Court of Appeals opinion correctly states that the head of the prior dealership told plaintiff's president "that the dealership was not making any money" (Pn. 8A). The record references in the footnote fully support this statement.**

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* The "fact" statement does not contain a single record or appendix reference, although we have received a letter from petitioner's counsel requesting the Clerk of the Court of Appeals to certify the record to the Clerk of this Court.

** "A. [By Mr. Feinerman] Well, he [the prior operator] told me he wasn't making any money.

"Q. Did you ask him any questions about the operation?

"A. Well, as I say, I discounted it because of the fact that I felt that he wasn't running the place the way it should be run." (A. 218)

• • • • •

Again, the "fact" statement asserts the dealership could not make money because the facilities were in poor shape (Pn., p. 6).

The actual fact is, incredible as it may seem, that petitioner never introduced any evidence whatever that respondents' alleged wrongful conduct caused it to suffer damages. Respondents contended in the Court of Appeals that the District Court properly could have directed a verdict for this reason alone. The Court of Appeals did not pass upon the point.

At page 6, petitioner says that Chrysler withheld $30,000 in warranty money, with the result that it was unable to relocate to a new dealership (Pn., p. 6).

Petitioner does not advise the Court that such contention was never made in the District Court. Moreover, it also fails to advise the Court that any warranty money owing by Chrysler Motors was a receivable, and the same as cash in hand, in determining whether petitioner had sufficient capital to locate in a new dealership and, therefore, it was legally immaterial whether Chrysler Motors "withheld" any sums.

The petition further states that Chrysler conditioned its repurchase of parts upon the termination of the franchise and $30,000 worth of Chrysler parts lay in garages of petitioner's shareholders at time of trial (pp. 6, 7). This contention was never made in the District Court.

Moreover, petitioner neglects to advise the Court that under Section 21 of the franchise agreements the obligation to purchase after termination did not arise until after the dealer had delivered the parts, tagged and inventoried for inspection, f. o. b. factory or some other point. Petitioner failed to do this. In addition, petitioner fails to advise the

"A. [By Mr. Feinerman] I believe that in one of the meetings • • • they [Chrysler representatives] did show us some documents of what it [the prior dealership] was doing." (A. 51)

Court that Chrysler advised petitioner's attorney that, notwithstanding its lack of legal obligation to purchase these parts, Chrysler was willing to purchase them according to paragraph 21 (letter of May 17, 1970). Petitioner's shareholders have these parts in their possession only because of petitioner's continuing failure to live up to its contract obligations.

A petition that seeks further review on the bases of misstatements of the kind above ought to be denied out of hand. Moreover, although we believe that the Court of Appeals statement of facts is correct as far as it goes, an additional statement is necessary to show the complete absence of any reasons why this case should be further reviewed by this Court.

Additional Statement of Facts.

Petitioner's amended complaint against the three Chrysler corporations was in two counts. Count I was under the Dealer Act (A. 2-12); Count II was based upon common law fraud (A. 14-22). For all practical purposes, the allegations in both counts were identical. Their only difference was the theory of recovery that they invoked.

In substance, the allegations of both counts were that respondents had made known roof defects on two structures leased from Chrysler Realty, concealed heating and lighting defects, promised to repair them all, but failed to do so, and also failed to keep a promise to relocate the dealership. Thus, although the Court directed a verdict as to Count I, petitioner later had a jury trial on its allegations which were also made in Count II. The jury found against the "facts" alleged by petitioner and denied by respondents, and which are the basis of its petition.

Petitioner was the sublessee of two buildings. The buildings were owned by a bank and had been leased to respondent Chrysler Realty. The lease and subleases are lengthy

documents but the pertinent provisions regarding the responsibility for defects are summarized in the Court of Appeals opinion, the accuracy of which has not been challenged by petitioner, *viz.*:

> "Under the terms of the primary lease and of the sublease to plaintiff the maintenance and replacement of the roof were the responsibility of the landlord in the prime lease, not the defendant sublessor, Chrysler Realty. And, under the provisions of the sublease to plaintiff, insofar as the other problem areas are concerned, the responsibility of repair, maintenance and replacement was plaintiff's." (Pn., p. 9A).

Petitioner characterizes the sublease as "repressive" (p. 9). An answer to a certiorari petition is hardly the place to analyze the terms of a lengthy lease, but we point out merely that the characterization is denied and that petitioner executed it with advice of counsel (A. 186).

Prior to entering into the sublease petitioner's president knew that both buildings showed evidence of their roofs leaking (A. 324, 327). A new roof had been put on one building just prior to the time petitioner moved in and a new roof was put on the other building two or three months later (A. 201). Notwithstanding, the two roofs continued to leak which resulted in internal damage.

Petitioner also experienced difficulties with the heating plants in both buildings. However, when Chrysler received notice of a complaint it promptly notified the landlord and repairs were made (A. 27, 28, 549-567).

In brief, the primary claim under both counts was based on alleged defects in the buildings and was essentially a landlord-tenant or, more accurately, sublessor-sublessee controversy between petitioner and Chrysler Realty.* The

* The Dealer Act defines "Automobile Manufacturer" to include a corporation under the control of a manufacturer in connection with the distribution of automotive vehicles (15 U. S. C. § 1221). Respondents contended below, and contend here, that a lease is not an automobile dealer franchise and Chrysler Realty was not

only additional fact pleaded in the complaint, and urged in the District Court, was a breach of an oral promise to relocate made by a field agent of Chrysler Motors. The Court of Appeals opinion shows four locations offered to petitioner were turned down (p. 9A). A fifth one, involving a Dodge franchise, a division of Chrysler Motors different from the Plymouth-Chrysler Division, was also granted by a Dodge zone manager, but, while negotiations were going on, the Dodge Division, unbeknownst to the parties, granted the dealership to another dealer (Pn. 10A, 11A). Petitioner's negotiations were merely in the discussion stage when this occurred (Pn. 11A).

The foregoing resumé of the actual facts demonstrates that the question of whether the District Court erred in directing a verdict under Count I presents no question of importance except to the litigants. This Court's certiorari jurisdiction ought not to be exercised to entertain this type of case.

II.

CERTIORARI SHOULD BE DENIED ALSO BECAUSE THE DECISION OF THE COURT OF APPEALS IS CORRECT.

The petition asserts that the lower Courts have decided an important question of federal law concerning the meaning of "good faith" within the context of the Automobile Dealer's Franchise Act (p. 7). Throughout the petition the expression "good faith" is used in a vague, and presumably common law, sense, and is claimed to include fraud, unaccompanied by coercion or intimidation; its statutory definition is completely ignored.

Even if common law fraud, without coercion or intimi-

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subject to the Act under the above definition since there was no evidence that it acts for Chrysler Motors in connection with the wholesale distribution of Chrysler-made vehicles. The Court of Appeals found it unnecessary to pass upon these contentions (Pn. pp. 12a, 13a).

dation, is made actionable by the Act, that question is completely academic in this case. As shown in point III, petitioner had a jury trial on its fraud charges and the jury's verdict, and unappealed judgment, settles that no fraud was perpetrated upon it. In this state of the record it is an exercise in futility to debate whether petitioner legally could have recovered for fraud under the Dealer Act if Count I had been submitted to the jury.

In any event, petitioner's construction of the statute is erroneous under an unbroken line of lower Court decisions and its legislative history.

The Court of Appeals held that "The statutory definition of 'good faith' has been construed by the courts according to its literal language, and the existence or nonexistence of 'good faith' must be determined in a context of actual or threatened coercion or intimidation." In support, it cited the following cases: *Hauley* v. *Chrysler Motors Corp.*, 10 Cir., 433 F. 2d 708; *Kotula* v. *Ford Motor Co.*, 8 Cir., 338 F. 2d 732; *Globe Motors, Inc.* v. *Studebaker-Packard Corp.*, 3 Cir., 328 F. 2d 645, 647; *Milos* v. *Ford Motor Co.*, 3 Cir., 317 F. 2d 712, 715-716; *Woodard* v. *General Motors Corporation*, 5 Cir. 298 F. 2d 121, 127.

The foregoing interpretation of the statute is plainly correct.

In *Milos* v. *Ford Motor Co.*, 317 F. 2d 712, at 715 (C. A. 3), *cert. den.* 375 U. S. 896, plaintiff contended that the statute should not be confined to acts of coercion and intimidation. In overruling this contention, the Court said the legislative history was directly contrary to plaintiff's contention:

> "The plain language of the statute does not warrant such an approach; the legislative history rejects it. Perhaps the most succinct and direct refutation of plaintiff's contention is found in the following excerpt from the House Report:
>
> 'The principal effect of the bill as amended by

> the committee is to give the dealer a right of action against the manufacturer, where the manufacturer fails to act in a fair and equitable manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation. The term "fair and equitable" as used in the bill is qualified by the term "so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party." In each case arising under this bill, good faith must be determined in the context of coercion or intimidation or threats of coercion or intimidation. Each party to an automobile franchise would have a special obligation to guarantee the other party freedom from coercion or intimidation of any kind.' H. R. Rep. No. 2850, 84th Cong., 2d Sess. 1956), 3 U. S. Code Cong. & Adm. News pp. 4596, 4603 (1956).

The issue was again raised on the floor of the House in the following colloquy:

> 'Mr. Halleck. In other words, while the words "fair and equitable" are used, speaking of the relationship between the parties, those words "fair and equitable" would be limited, as this language is contained in the bill, to "coercion and intimidation"?
>
> 'Mr. Celler. That is correct.' " 102 Cong. Rec. 14070 (1956).

In the light of the statutory definition of "good faith" the Court of Appeals proceeded to consider each of petitioner's claims, although, as we have seen, a number of them had never been raised in the District Court. In holding there was no evidence of "coercion or intimidation" sufficient to go to the jury it gave the words "coercion or intimidation" a liberal, rather than strict, construction. For example, it considered petitioner's claim—never urged in the District Court—that the jury could have found that respondent Chrysler Motors withheld funds from petitioner in order to deprive it of the opportunity of acquiring the

Evanston Dodge franchise (Pn. 13A). Even if the contention could have been found to be true, which it properly could not have been, it is difficult to see how this could constitute coercion, etc. for failing to act in good faith in the statutory sense "in performing or complying with any of the terms or conditions of the franchise" (15 U. S. C. § 1222).

With the exception noted above, this case was nothing more than a landlord-tenant controversy between petitioner and Chrysler Realty which petitioner attempted to convert into a Dealer Act claim against all three Chrysler corporations. Petitioner's only claim was under Illinois law; that claim was submitted to the jury and the jury found against it.

The petition asserts the meaning of "good faith" within the context of the Dealer Act should be settled by this Court (p. 7). The interpretation given that Act by the Court of Appeals in this case is the same interpretation that has been given by every other Court of Appeals and District Court that has interpreted it. In addition to the *Milos* case, above cited, this Court has been requested at least four times to review Court of Appeals decisions interpreting the Act, as it was interpreted below, in record contexts incomparably better, from the dealer's standpoint, than the record in this case. *Kotula* v. *Ford Motor Co.*, 338 F. 2d 732 (C. A. 8, 1964), *cert. den.* 380 U. S. 979; *Southern Rambler Sales, Inc.* v. *American Motors Corp.*, 375 F. 2d 932 (C. A. 5, 1967); *Woodard* v. *General Motors Corporation*, 298 F. 2d 121 (C. A. 5, 1962), *cert. den.* 369 U. S. 887; *Pierce Ford Sales, Inc.* v. *Ford Motor Co.*, 299 F. 2d 425 (C. A. 2, 1962), *cert. den.* 371 U. S. 829. This Court having determined that none of the above cases was worthy of further review, ought to make the same determination here.

Moreover, apart from any other consideration, the District Court properly directed a verdict for respondents since petitioner introduced no evidence upon which any

award of damages could be sustained. Where there is no evidence on which a determination of damages could legally rest, the District Court can properly direct a verdict for the defendant. *Classic Bowl, Inc.* v. *A M F Pinspotters, Inc.*, 403 F. 2d 463, 467 (C. A. 7, 1968); *Wisconsin Liquor Co.* v. *Park & Tilford Distillers Corp.*, 267 F. 2d 928, 932 (C. A. 7, 1959).

The Court of Appeals opinion does not discuss the above point, presumably because it thought there were other ample grounds for affirming the District Court.

III.

CERTIORARI SHOULD BE DENIED BECAUSE THE QUESTIONS ARE ACADEMIC, INASMUCH AS THE FACTS RELIED UPON TO SHOW A VIOLATION OF THE DEALER ACT WERE TRIED TO A JURY UNDER COUNT II AND FOUND AGAINST PETITIONER, AND COULD NOT BE RELITIGATED BY IT IN ANY NEW TRIAL.

Finally, we submit the petition should be denied because the questions it raises are merely academic in view of the jury's verdict in favor of respondents under Count II. Even if the Court erred in directing a verdict as to Count I based on the Dealer Act, it would be useless to remand for a new trial because Count II was based on virtually identical allegations and petitioner would be barred from relitigating its contested factual claims under the doctrines of *res judicata* and estoppel. The Court of Appeals opinion does not discuss this point, but this is an independent ground for denying certiorari. Even though the theory of recovery was different under both counts, petitioner could not relitigate the contested allegations of Count II in any new trial under the Dealer Act Count. *Tait* v. *Western Maryland Ry. Co.*, 289 U. S. 620, 623; *Harding Co.* v. *Harding*, 352 Ill. 417, 426. A judgment will not be reversed where

the same judgment would have to be rendered on retrial. *Townsend* v. *Jemison*, 7 How. 706.

The Chief Justice has only recently commented publicly on how the burdens of this Court have tremendously increased within the last few years. Much of this burden is due to the fact that numerous petitions for certiorari are filed which should never be filed because they present no question of national importance. The instant petition is typical. Whether, under a particular state of facts, a District Court erred in directing a verdict in an action based on a federal statute certainly does not raise any question worthy of review by this Court. Even a more general contention that a Court of Appeals has misinterpreted a federal statute does not raise a question worthy of review where that construction is in accord with an unbroken line of decisions and no serious effort has been made to show that the construction given was erroneous. Moreover, the proper construction of the statute presents only an academic question under the record in this case.

Almost fifty years ago, when this Court's case load was incomparably lighter, Mr. Chief Justice Taft stated that the writ should not be granted "except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority in the Circuit Courts of Appeal." *Lanye & Bowler Corp.* v. *Western Well Works*, 261 U. S. 387, 393 (1923). Petitioner does not claim that there is any conflict among the Circuits in the interpretation of the Dealer Act, because there is none.

Mr. Justice Frankfurter, another Justice who repeatedly emphasized that the role of this Court is to decide questions of national importance, in speaking for the Court in *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U. S. 70, 74 (1955), said:

> "A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants."

It is difficult to conceive of questions less "cert-worthy" than those presented by the petition. Irrespective of whether the judgment of the Court of Appeals was right or wrong, the petition should be denied because the questions presented are totally devoid of any public importance.

CONCLUSION.

For the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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